

The U. S. Supreme Court provides guidance on the issue of nexus in Quill v. North Dakota, 112 S. Ct. 1902 (1992). (This is a GIL).

January 2, 2002

Dear Xxxxx:

This letter is in response to your letter dated November 27, 2001 to Director Glen Bower. Director Bower has requested that I respond to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

In order for retailers to remain competitive it is important that the sales to Illinois residents be taxed equally.

My client has a store in CITY which sells music equipment. Its main competitor is AAA which has four stores in CITY. A description of AAA is attached.

AAA has a division 'BBB,' probably a wholly-owned subsidiary, which sells mail order. AAA consolidates the operations of BBB into its financial statements. It combines its buying power in purchases from its suppliers because the products of BBB and AAA are the same. The Board of Directors of AAA is the ultimate governing body over both entities. It files consolidated income tax returns which combines the financial operations of parent and subsidiary and which enables it to offset the losses of one against the profits of the other.

I understand that some states have statutes that say that an entity automatically has sales/use tax nexus with a state if it is sufficiently related by ownership to an entity that does have such nexus.

Under these facts, it appears that BBB has nexus with Illinois which requires it to submit to Illinois tax statutes.

Notwithstanding these facts, a purchase from BBB by an Illinois resident, copy of invoice attached, shows that no Illinois sales tax was collected.

It seems to me that the Department of Revenue should look into this practice. My client does not want an advantage. It merely wants to level the playing field.

Thank you for bringing this matter to our attention. As noted above, we cannot issue a binding determination about sales/use tax nexus in the context of a General Information Letter. As you are probably aware, there is case law that affords some protection to certain sister corporations that are owned by the same parent. Please refer to *SFA Folio Collections, Inc. v. Tracy*, (1995), 73 Ohio St. 3d 119, 652 N.E. 693. However, as we are not aware of all the facts regarding AAA and BBB, we are referring your letter to the Department's Compliance Bureau for a determination regarding whether the company has nexus and is required to register as an Illinois Use Tax collector.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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